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The Nuclear Ban Treaty: An Overview

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Since the founding of the United Nations in 1945, the First Committee of the UN General Assembly (UN GA) has called for nuclear disarmament. UNGA Resolution A/71/258 (2016) called on UN member states to negotiate in 2017 a legally binding Treaty on the Prohibition of Nuclear Weapons, also known as the nuclear "ban treaty." Negotiations were held in New York, February 27-March 31, and June 15-July 7. At the end of the conference, 122 countries voted to approve the treaty. Singapore abstained, and the Netherlands voted against it, citing conflicts between the treaty and the Netherland's commitments as a member of NATO. Article 1 says that adherents would never "develop, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices." This includes a prohibition on hosting nuclear weapons that are owned or controlled by another state. Nor would states parties transfer, receive control over, or assist others in developing nuclear weapons. They also would not use or threaten to use nuclear weapons or other nuclear explosive devices. Article 7 requires states to give assistance to individuals affected by the use or testing of nuclear weapons and provide for environmental remediation.

For many, the effort to abolish nuclear weapons stems from strong moral objections, as expressed by Pope Francis at the opening of negotiations. Treaty supporters seek to establish an international norm against the possession and use of nuclear weapons, which they argue would strengthen nonproliferation norms and raise awareness of the humanitarian consequences of developing and using nuclear weapons. Calls for such a ban have existed for decades, but have grown in recent years, possibly reflecting the view of some that nuclear weapon states have been slow in achieving nuclear disarmament under article VI of the Nuclear Nonproliferation Treaty (NPT) and continue to modernize their arsenals. Advocates point out that while there are international agreements that ban other categories of weapons of mass destruction, namely the biological and chemical weapons conventions, there is no such prohibition on nuclear weapons.

Some critics of the ban treaty are concerned that a new agreement would undermine the NPT and its verification system of International Atomic Energy Agency (IAEA) safeguards. The NPT, signed in 1968 and entered into force in 1970, commits the five officially recognized nuclear weapons states (United States, United Kingdom, Russia, France, and China) to disarmament but is not an outright ban on possession. Non-nuclear weapon NPT states foreswear nuclear weapons and place nuclear materials and facilities under international safeguards.

The Obama and Trump Administrations have opposed a ban treaty and, along with 40 other states, have not participated in negotiations. President Obama's Prague agenda emphasized the pursuit of a world without nuclear weapons, but viewed this as a long-term objective—instead supporting the existing U.S. policy of reducing nuclear weapons through arms control treaties with Russia (such as new START) in the near term and bolstering constraints on the spread of nuclear weapons through the NPT. U.S. Ambassador to the U.N. Nikki Haley, with U.N. ambassadors from the United Kingdom and France, jointly announced in March 2017 that they would not participate in ban treaty talks. In response to the conclusion of the

treaty, a joint press release from the United States, UK, and French Permanent Representatives said, "A purported ban on nuclear weapons that does not address the security concerns that continue to make nuclear deterrence necessary cannot result in the elimination of a single nuclear weapon and will not enhance any country's security, nor international peace and security." The current Administration is reviewing U.S. policy on the eventual elimination of nuclear weapons, but does not support a near-term ban on nuclear weapons.

Even though negotiations have ended, some issues appear to be unresolved, such as IAEA safeguards requirements for treaty members. Also, the text appears to be unclear about whether nuclear weapon possessor states are to join the treaty before or after they dismantle their nuclear weapons programs. Article 2 of the ban treaty requires a declaration stating whether or not the member state had possessed nuclear weapons. In addition, Article 4 requires states with nuclear weapons to submit within 60 days a "time-bound plan for the verified and irreversible destruction of that State Party's nuclear-weapon program," a process that the IAEA would verify. Some argue that would-be treaty members should devise disarmament details later, because a loosely worded treaty would achieve the goal of establishing a norm against nuclear weapons possession and use. Others worry that a lack of a timeline for disarmament would diminish the treaty's effectiveness by giving states the ability to accede to the treaty's goals without real disarmament obligations. Some observers say it is appropriate that the treaty does not delineate disarmament steps, as none of those states affected are participating in the negotiations, and it would be more effective for each state be able to determine its own timeline.

Ban negotiations have highlighted a larger debate over the time-frame for nuclear disarmament, and how the existing nonproliferation regime should evolve. Central to this question is whether a treaty prohibiting nuclear weapons would undermine the treaties already in force (i.e., the NPT and the Comprehensive Test Ban Treaty [CTBT]). Proponents of such a treaty say that it enhances, rather than contradicts, the NPT. Article 18 of the treaty text says that "[t]he implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty."

Some states see nuclear weapons as making a valuable contribution to their security. Supporters of the ban treaty dismiss nuclear deterrence as a security policy, arguing that nuclear weapons can only cause harm to nations and people, and view the risk of accidental or purposeful use as high while the weapons exist. Therefore, ban proponents argue, eliminating nuclear weapons is the only way to prevent nuclear use. Opponents of the treaty agree that the use of nuclear weapons in war would be horrific but assert that nuclear deterrence has prevented not only nuclear war, but also major power conventional conflict, for over 70 years. This view reflects a belief that the best way to prevent nuclear use is to deter both nuclear war and major power conflict that could escalate to nuclear war.

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